

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO. 99-CV-3715
)	
v.)	
)	
CHEMCLENE, INC.,)	
SPRINGRIDGE MANAGEMENT CORP.,)	
W. LLOYD BALDERSTON,)	
RUTH BALDERSTON,)	
KING GRAVER,)	
)	
Defendants.)	
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COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9607, 9613, for the recovery of response costs incurred by EPA in response to the release or threat of release of hazardous substances at the Malvern TCE Superfund Site, located at and around 258 Phoenixville Pike, in Malvern, East Whiteland Township, Chester County, Pennsylvania ("the Site"). The United States also seeks a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), establishing Defendants' liability for any response costs that may be incurred by EPA in the future, that will be binding in any subsequent action by the United States against Defendants to recover such further response costs.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606 and 9613(b).

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b), because the release or threatened release of hazardous substances that gives rise to these claims occurred in this district and because the Site is located in this District.

DEFENDANTS

4. Chemclene, Inc., (“Chemclene”) is a corporation formed under the laws of the Commonwealth of Pennsylvania. At all times relevant to this action, Chemclene conducted business and maintained its principal office in the Commonwealth of Pennsylvania, within the Eastern District of Pennsylvania.

5. Springridge Management Corporation (“Springridge”) is a corporation formed under the laws of the Commonwealth of Pennsylvania. At all times relevant to this action, Springridge conducted business and maintained its principal office in the Commonwealth of Pennsylvania, within the Eastern District of Pennsylvania.

6. W. Lloyd Balderston is an individual residing in the Commonwealth of Pennsylvania, within the Eastern District of Pennsylvania.

7. Ruth Balderston is an individual residing in the Commonwealth of Pennsylvania, within the Eastern District of Pennsylvania.

8. King Graver is an individual residing in the Commonwealth of Pennsylvania, within the Eastern District of Pennsylvania.

GENERAL ALLEGATIONS

9. Ruth Balderston and her husband Henry Lloyd Balderston purchased a 142.9 acre tract of real property in East Whiteland Township, Chester County, Pennsylvania, i.e., the real property on which the Site is located, on July 1, 1949.

10. Upon the death of Henry Lloyd Balderston in 1975, Defendant Ruth Balderston became sole owner of the real property on which the Site is located.

11. Chemclene was formed on or about May 13, 1946.

12. From 1952 until 1992, Chemclene sold and reclaimed industrial cleaning solvents, including trichloroethene ("TCE"), operating on five acres of the real property owned by Ruth Balderston.

13. As part of its operations, Chemclene received, stored, and processed used solvents and other wastes that included hazardous substances at its Main Plant Area ("MPA") at the Site.

14. Chemclene disposed of byproducts of the solvent reclamation process at an area on Site now known as the Former Disposal Area ("FDA").

15. Chemclene also disposed of other hazardous substances at the FDA.

16. In or about 1975, Defendant W. Lloyd Balderston became President of Chemclene.

17. As President of Chemclene Defendant W. Lloyd Balderston maintained an office at the Site.

18. As President of Chemclene, W. Lloyd Balderston exercised direct control over the Chemclene Facility, including control over decisions involving waste disposal.

19. In or about 1975, Defendant King Graver became Vice President of Chemclene.

20. Defendant King Graver was second in command of the Chemclene operations.

21. In the spring of 1980, TCE was detected in groundwater from several wells in the

vicinity of the Chemclene plant.

22. Private domestic wells and on-Site monitoring wells were sampled by Pennsylvania's Department of Environmental Resources, now known as the Pennsylvania Department of Environmental Protection ("PADEP"), and by Chemclene in June 1980 and July 1981. Analysis of the samples revealed contamination of the underlying aquifer with hazardous substances.

23. EPA listed the Site on the National Priorities List ("NPL") in September 1983. The NPL is promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and can be found at 40 C.F.R. Part 300, Appendix B.

24. In March 1990, Ruth Balderston sold the 5-acre tract of the Site containing the Chemclene operation (known as Assessors Parcel 42-3-17.4 East Whiteland Twp.) to Chemclene ("the Chemclene Property").

25. Commencing in 1993, EPA conducted a variety of response actions at the Site. Among other things, EPA assumed control of maintenance and periodic sampling of the private home wells.

26. In or about April 1995, Ruth Balderston sold three tracts of real property, which included the remainder of the original parcel acquired by Ruth Balderston and her husband in 1949, to Defendant Springridge ("the Springridge Property") for the sum of one dollar.

27. W. Lloyd Balderston is the President of Defendant Springridge, and is the majority, or sole, shareholder of the company.

28. The Springridge Property adjoins and surrounds the Chemclene Property.

29. Subsurface migration of contaminated groundwater from the Chemclene Property has contaminated the aquifer beneath the Springridge property.

30. EPA completed a Remedial Investigation of the Site in January 1997. In November 1997, EPA issued a Record of Decision ("ROD"), pursuant to which EPA selected a remedy to be implemented at the Site.

31. The ROD remedy involves, inter alia: at the MPA, soil vapor extraction, soils capping, and groundwater pumping and treatment; at the FDA, excavation and on-Site consolidation of soils, and groundwater pumping and treatment.

32. As a result of its review of Site records, EPA identified a group of potentially responsible parties ("PRPs") for the Site. Most of these PRPs were generators or transporters of hazardous substances sent to the Site for processing and/or disposal.

33. The United States has incurred costs responding to releases and threats of releases of hazardous substances at the Site. These costs are not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300, and were incurred for, inter alia, inspecting, evaluating, assessing, monitoring, sampling and analyzing the release or threat of release of hazardous substances at the Site, and for other response actions related to the Site.

FIRST CLAIM FOR RELIEF

(RESPONSE COSTS)

34. The foregoing paragraphs are realleged and incorporated herein by reference.

35. All of the Defendants are "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9602(21).

36. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

37. "Hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) transported and/or disposed of by Defendants at the Site.

38. There has been a "release or threatened release," as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances into the environment at the Site.

39. The Regional Administrator of EPA Region III, acting pursuant to his delegated authority, determined in the ROD that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the release or threatened release of hazardous substances at the Site.

40. The United States has incurred costs authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, and defined by Section 101(23) and (25) of CERCLA, 42 U.S.C. § 9601(23) and (25), as a result of the release or threat of release of hazardous substances from the Site.

41. The United States' actions at the Site were "response" actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

42. The costs incurred by the United States in conducting the response actions were incurred in a manner not inconsistent with the National Contingency Plan, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

43. The Defendants are among the classes of persons described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Specifically, Defendants Chemclene, W. Lloyd Balderston, and Ruth Balderston, are persons who, at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances were disposed of, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Defendant Springridge is a present owner or operator of a facility, within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

44. Defendants are liable to the United States for the payment of response costs incurred by the United States as a result of the response actions taken at the Site pursuant to

Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

SECOND CLAIM FOR RELIEF

(DECLARATORY JUDGMENT)

45. The foregoing paragraphs are realleged and incorporated herein by reference.

46. The United States will continue to incur response costs in connection with the Site until the Site is cleaned up and all response costs are paid by responsible parties.

47. Defendants are subject to a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), on liability for response costs or damages that will be binding on any subsequent actions to recover further response costs or damages.

THIRD CLAIM FOR RELIEF

(FAILURE TO PROVIDE INFORMATION)

48. The foregoing paragraphs are realleged and incorporated herein by reference.

49. CERCLA Section 104 (a)(2), 42 U.S.C. 9604(a)(2) provides:

(2) Access to information

Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

(C) Information relating to the ability of a person to pay for or to perform a cleanup.

50. On May 16, 1997, a duly designated representative of EPA mailed an information request letter to Defendant King Graver, Vice-President of Chemclene, pursuant to CERCLA Section 104(e), 42 U.S.C. § 9604(e).

51. A United States Postal Service return receipt confirms that the May 16, 1997

information request letter was received by Defendant Graver on May 20, 1997. The return receipt was signed by Defendant W. Lloyd Balderston.

52. EPA's May 16, 1997 information request letter required Defendant Graver to submit certain documents and information to EPA's designated representative within thirty (30) calendar days of the receipt of the letter. The information required to be provided by Defendant Graver related to, among other things, "information concerning the generation, storage, treatment, transportation, and disposal methods of hazardous substances that may have been or threaten to be released from the Malvern TCE Site. . . [and] the past and present ownership of the Site and its operators".

53. Defendant Graver failed to respond to EPA's May 16, 1997 information request letter within the required 30-day time period.

54. In a letter dated June 30, 1997, EPA was advised by Defendant Graver's counsel that "Mr. King Graver invokes the 5th Amendment in response to the Environmental Protection Agency's May 16, 1997 letter requesting information about his duties and responsibilities at the Malvern TCE Site and an interpretation of Chemclene's business records."

55. On June 11, 1999, a duly designated representative of EPA sent a second CERCLA Section 104(e) information request letter to Defendant Graver via "FedEx", overnight delivery.

56. EPA's June 11, 1999 information request letter requested information "concerning a release, or the threat of release, of hazardous substances, pollutants or contaminants into the environment at the Malvern TCE Superfund Site . . . [and] an inquiry into, among other things, the operations of Chemclene Corporation"

57. FedEx has confirmed that the June 11, 1999 information request letter was

delivered by to Defendant Graver's place of residence on June 12, 1999.

58. On June 16, 1999, a civil investigator for EPA, hand-delivered a copy of the June 11, 1999 information request letter to Defendant King Graver personally at his place of business.

59. Defendant King Graver has failed to respond to EPA's requests for information delivered on June 12, and June 16, 1999.

60. CERCLA Section 104(e)(5)(B), 42 U.S.C. § 9604(e)(5)(B), authorizes the Court assess a civil penalty not to exceed \$25,000 for each day of noncompliance with a request for information or documents against any person who unreasonably fails to provide the information and documents requested. This penalty has been increased to \$27,500 per day under the Civil Monetary Penalty Inflation Adjustment Rule, promulgated at 40 C.F.R. Part 19, for violations occurring after January 30, 1997.

FOURTH CLAIM FOR RELIEF

(FRAUDULENT TRANSFER)

61. The foregoing paragraphs are realleged and incorporated herein by reference.

62. There was a "transfer" of real property from Defendant Ruth Balderston to Defendant Springridge, as defined by Sections 3301(6) and 3305(1)(A) of the Federal Debt Collection Procedures Act ("FDCPA"), 28 U.S.C. §§ 3301(6) and 3305(1)(A).

63. Defendant Ruth Balderston received only one dollar in payment or exchange for the property, and therefore Ruth Balderston did not receive a "reasonably equivalent value" for the property transferred, as defined by Section 3303(b) of the FDCPA, 28 U.S.C. § 3303(b).

64. The transfer of property to Springridge, was a transfer to an "insider," within the meaning of Section 3301(5) of the FDCPA, 28 U.S.C. § 3301(5).

65. Prior to the transfer of property to Springridge, based on hazardous waste cleanup

activities at the Site, Ruth Balderston could anticipate being sued by EPA or the Commonwealth of Pennsylvania for response costs under Section 107 of CERCLA, 42 U.S.C. § 9607.

66. Prior to the transfer of property to Springridge, Ruth Balderston could foresee that she could incur debts beyond her ability to pay as a result of her liability for response costs under Section 107 of CERCLA, 42 U.S.C. § 9607.

67. The transfer of property from Ruth Balderston to Springridge was fraudulent as defined by Section 3304(b)(1)(A) of the FDCPA, 28 U.S.C. § 3304(b)(1)(A).

68. In addition, or alternatively, the transfer of property from Ruth Balderston to Springridge was fraudulent as defined by Section 3304(b)(1)(B) of the FDCPA, 28 U.S.C. § 3304(b)(1)(B).

69. Section 3306(a)(1) of the FDCPA, 28 U.S.C. § 3306(a)(1), authorizes the Court to void the property transfer between Ruth Balderston and Springridge, to the extent necessary to satisfy the debt to the United States, and to order such other relief as may be appropriate, pursuant to 28 U.S.C. §§ 3306(a)(2) and 3306(a)(3);

PRAYER FOR RELIEF

WHEREFORE, the United States of America requests that this Court enter a judgment against Defendants as follows:

A. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), order the Defendants Chemclene, Springridge, W. Lloyd Balderston, and Ruth Balderston to pay all response costs incurred by the United States in response to the release and threat of release of hazardous substances at the Site;

B. Enter a declaratory judgment of liability under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), against Defendants Chemclene, Springridge, W. Lloyd Balderston, and Ruth

Balderston that will be binding on any subsequent action to recover further response costs or damages;

C. Assess a civil penalty against Defendant King Graver pursuant to CERCLA Section 104(e)(5)(B), 42 U.S.C. § 9604(e)(5)(B), and order Defendant to comply with EPA's request for information;

D. Void the property transfer between Ruth Balderston and Springridge to the extent necessary to satisfy the debt to the United States, pursuant to Section 3306(a)(1) of the FDCPA, 28 U.S.C. § 3306(a)(1), and order such other appropriate relief pursuant to 28 U.S.C. §§ 3306(a)(2) and 3306(a)(3);

E. Award Plaintiff its costs and disbursements in this action; and

F. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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